19

Department of Ag Dept

OFFICE Boundary

STATION Lellegaum

Ms No. 1376

1376

A 1390/33

Dated 15-5-33

	Date	Initial
Given for copying		
Copied		
Examined		
Signed		
Given for despatch		
Despatched		
Indexed		
To be destroyed on*		

(SUBJECT.)

Reports (Port Hacearn) Within Straits -
to 1933 - Mildy. - Rev Recovery -
Legges - Vaccho

* Not to be filled in in the case of permanent records.

A 1390

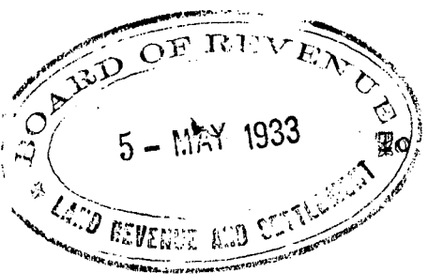
Ref.A3 No.1143-33. Kanara Collector's Office,

Mangalore, dated 29th April '33.

From

E. M. Gawne, Esquire, I.C.S.,

Collector of South Kanara.



To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Suits - Puttur - District Munsif's Court - O.S.No. 85/33 - Revenue Recovery Act - Nidle village - Distraint of rice.

I enclose a copy of the plaint in the above suit, which is for a decree directing Government to deliver to the plaintiff 70 muras of rice alleged to have been distrained from him and for certain other consequential reliefs.

2. The facts of the case are as follows:-

Early in June 1932, the Potel of Nidle village submitted to the Tahsildar of Puttur the records of distraint of 70 muras of rice alleged to have been made at the plaintiff's house for the recovery of the arrears of land revenue assessment amounting to Rs. 200/- due from the plaintiff. The Potel having in his report No.33 dated 4-6-32, requested the issue of sale notice in respect of the rice, the Tahsildar issued on 4-7-32 Form No. 3 notice posting the sale of the rice alleged to have been distrained to 27-7-32. This rice was, according to the records of distraint, entrusted by the Potel to the custody of one Rama Gowda of Patrame village. The sale notice was served on the defaulter (plaintiff) on 10-7-32. Meanwhile, the Potel was placed under suspension on a charge of temporary misappropriation of Government money and the neighbouring Potel of Kokkada was put in charge of the village with effect from 10-6-32. Rama Gowda referred to above then informed the

Kokkada Potel that no property had been made over to his custody by the Middle Potel and submitte petition on 23-6-32 to that effect to the Deputy Tahsildar, Beltangady, within whose jurisdiction the village lies. The Deputy Tahsildar paid a surprise visit to the village and held a confidential enquiry in the matter. He also recorded statements from the parties concerned as well as others and came to the conclusion that the Potel never distrained any rice from the plaintiff's house and that the records of the alleged distraint were spurious and concocted by the Potel in collusion with the defaulter (plaintiff). On the recommendation of the Deputy Tahsildar, the plaintiff's land was ordered by the Tahsildar to be attached and sold for the recovery of the arrears due. The land was accordingly attached and subsequently sold on 29-9-32 and for want of bidders, bought in by Government. Meanwhile, the plaintiff issued a suit notice in the matter, but in view of the above circumstances my predecessor, Mr. Hussain, recorded it. Subsequently, within 30 days of the date of sale, the plaintiff paid the arrears with interest and the sale was cancelled. The plaintiff then sent a second suit notice for the return of the rice alleged to have been distrained and for the payment of the loss sustained by him, but as the case Government was that there was no distraint of rice, I recorded it. Hence the suit. I am investigating whether charges were framed against the Potel and with what result. But that does not affect the necessity to file a written statement in the court.

3. This is a test suit. The Government Pleader, Mangalore, whom I have consulted, is of opinion that if the contentions of Government are proved, the plaintiff cannot succeed. I enclose a draft written statement prepared by the Vakil at Puttur and amended by the Government Pleader, Mangalore and request that it may be approved and the defence of the suit sanctioned.

4. A copy of the plaint dated 9-2-33 was received by me together with the summons of the Court on 27-2-33. The suit stands posted to 16-6-1933. The connected records noted in the

margin* are enclosed for reference.

* 1. Collector's file D.Dis.8517-32.
2. do. D.Dis.10412-32.
3. Puttur Taluk office file of records of distraint.
4. do. III P.R.175/42.
5. do. L.Dis.C.9773/A1-32.

Your obedient servant,

Collector.

1.5.33

5

In the Court of the District Munsiff of Puttur.

.S.85/1933.

Venkatramana alias Laxminaraina. Plaintiff.

The Secretary of State for India in Council. Defendant.

Written statement of the defendant under Order 8 Rule 1 of the C.P.Code.

1. The Plaintiff's suit is unjust, frivolous and unsustainable at law.

2. The Defendant admits that Plaintiff was in arrear of assessment to the extent of Rs.201-3-0 on account of properties appertaining to Pattas 22, 51 and 75 of Nidle village as alleged in paragraph 1 of the plaint but denies that the then Potel of Nidle village distrained or attached on 4.6.1932, 70 muras of rice or any rice of the Plaintiff in his house and that any rice was actually removed from his possession. The said Potel who is a near relation of the Plaintiff, in collusion with him and with an ulterior purpose, falsely created records to show that 70 muras of rice were distrained from his house and taken possession of, for arrears of assessment when as a matter of fact no rice was distrained or removed from Plaintiff's house. The Plaintiff who is privy to such fraudulent records. has taken advantage of such false records to lay a false claim and has ~~sued~~ filed this suit to make an unlawful gain.

3. As no rice was distrained or removed from Plaintiff's possession, the sale by public auction could not be held on 27.7.1932, the date fixed for the sale. There was an enquiry held in the matter by the Deputy Tahsildar of Beltangadi and it was then discovered and found that the so called distraint was a bogus one and that the said Potel in collusion with the Plaintiff created false records about distraint.

4. The Plaintiff having persisted in not paying the arrears of assessment due by him, it became necessary and the Revenue Authorities were obliged to attach the immoveable ---- property of the Plaintiff in respect of which the assessment was due.

5. The Defendant denies that the attachment of the immoveable property was hurriedly made and it was illegally sold as alleged in the plaint.

6. No relief could be given to the Plaintiff on his petitions referred to in the plaint as Plaintiff himself knew that no rice was attached and the records to that effect were falsely created.

7. As the Plaintiff did not pay the arrears of revenue even after attachment of the immoveable property, the same was sold on 29.9.1932 on account of Plaintiff's default. The said sale was cancelled on Plaintiff's paying the amount.

8. The Defendant is not liable for acts, misfeasance and malfeasance and fraudulent and collusive conduct and acts of the said Potel, who, in conspiracy with the Plaintiff, made no actual attachment or distraint but merely created false records.

9. The Plaintiff is not entitled to get back the rice or its price as no rice was attached or taken from him as stated above.

10. This Defendant does not admit that the potel acted or was acting within the scope of his authority in the matter of the alleged attachment, while, in fact, there was no real attachment, and submits further that the potel acted beyond the scope of his authority in the matter and in creating false records and as such, he cannot be deemed to be an agent of this Defendant, as alleged in the plaint, nor could this Defendant be held liable for the wrongful acts or omissions of the potel on any account whatsoever. **The Plaintiff, if he has any grievance at all, must look to the potel only for relief and cannot sue this Defendant. The Plaintiff has no valid cause of action against this Defendant.**

11. The Plaintiff is not entitled to any relief.

12. All other allegations in the plaint which are not expressly admitted herein are denied.

13. The suit may, therefore, be dismissed with costs.

For Collector.

2/5

2.5.33

In the Court of the District Munsif of Puttur.

O.S.85/1933.

Venkatramana alias Laxminarayana, adopted son of Subraya, Nidle village, Puttur Taluk. — Plaintiff.

The Secretary of State for India in Council represented by the Collector of South Kanara. ------ Defendant.

Plaintiff begs to state as follows:- Sec.26 of Act 5/1908.

1. The Plaintiff is the holder of pattas Nos.22, 51 and 75 of Nidle village, Puttur Taluk, and he being in arrears of assessment to the extent of Rs.201-3-0 for the fasli 1341 Defendant through its agent the then Potail of Nidle village attached on 4.6.1932. 70 muras of rice belonging to the Plaintiff from the Plaintiff's house and took actual possession of the same.

2. It was advertised that the said attached rice would be sold by public auction on 27.7.1932, but on the said date no officer of the Government came to the village to hold the sale.

3. On the other hand, S.No.152/2 and 229/1 of Nidle village and owned by the Plaintiff were in the mean time attached and hurriedly illegally sold for the very arrears of revenue on 29.9.1932, though the Plaintiff petitioned to the Tahsildar of Puttur Taluk on 22-8-1932 either to sell the attached rice at the first instance or to raise the attachment over it and deliver it back to the Plaintiff.

4. Another such petition was sent by post registered to the Defendant on 14.9.32, but without giving any relief to these petitions of the Plaintiff, the Defendant actually sold the Plaintiff's immoveable property on 29.9.32 and the Plaintiff was constrained to deposit Rs.214-10-3 to the Puttur Sub Treasury on 27.10.32 to get a cancellation of the sale of his immoveable property and save himself from the loss caused thereby.

5. On 9.11.1932 the Plaintiff sent a registered notice to the Defendant under Sec.80 of Act V/1908 and though it reached him on 14.11.1932, as no relief has as yet been granted, Plaintiff is obliged to file this suit.

6. The Defendant is not only legally liable to redeliver the attached rice to the Plaintiff if it is still in a saleable condition or in the alternative to pay its market value as it then stood with interest thereon but should also pay Rs.13-7-3 being the excess amount he had to deposit to set aside the sale.

7. The cause of action for this suit arose since 4.6.32, 27.10.32 and 9.11.32 in Nidle village.

8. Plaintiff values the relief claimed at Rs.302-8-6 for purposes of Court fees and jurisdiction.

9. Plaintiff therefore prays for a decree and judgment directing the Defendant

(a) to deliver back all the 70 muras of his attached rice in as good a condition as it was when being attached or proposed to be sold or in the alternative to pay its market value Rs.262-8-0 at Rs.3-12-0 a mura as it then stood.	262- 8- 0
(b) Interest thereon at 12½ % from 4.6.32 up to date.	24- 9- 0
(c) to pay the excess amount deposited by the Plaintiff to set aside the sale.	13- 7- 3
(d) Interest thereon at 12½ % from 27.10.32 up to date.	0- 7- 0
(e) costs of registered notice.	1- 9- 3
(f) further interest and costs of suit with interest.	..
(g) such other and further reliefs as the Court may deem fit to grant.	..
	302- 8- 0

Date 9.2.33.
Puttur.

Original plaint verified and signed by the Plaintiff and Vakil also.

True Copy)

(Sd.) K.K.Shenai,

Vakil for Plaintiff.

(True Copy)

Mallikarjuna 2/5

For Collector.

KKR 2.5.33

Date of Hearing 16.6.33 9

Subject.

B. F. XXII-A-19—28,004—10-3-32 (V)

FOR MEMBER. /

Keith (North Kaieteur) Patter Bacchus
vs 85/33 Nidh. Vs. Dr. Kaieteur
Guyana

5/6(49)

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :-

Register No. ____ From the (M.358) _____, No. _____, dated 11-3 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. No. 1376 dated 15-5 193

The Board proceeding
the defence of the accused approves the draft
written statement
submitted by the Collector

on success depends on
seeming good evidence
of the fraudulent nature
of the alleged distraint
etc. —

GJ 10-5-33

8/5/33

S.

A.H.S. 11.5.33.

SECY.
15 MAY 1933

Ins. OB 15-5-33

36

The Co Collector of North Kaieteur
with accelerated postal
(p3 y)